

APPROVED
MINUTES OF THE REGULAR PLANNING BOARD MEETING
MONDAY, August 24, 2009

1. CONVENE: President Kohlstrand called the meeting to order at 7:07 p.m.
2. FLAG SALUTE: Vice President Ezzy Ashcraft
3. ROLL CALL:
PRESENT: President Kohlstrand, Vice-President Ezzy Ashcraft, Board members Autorino, Cook, Cunningham, Lynch, and Zuppan.

ABSENT: None.
4. MINUTES: Minutes from the meeting of July 27, 2009
President Kohlstrand noted that the minutes should be corrected to reflect the information requests by the Planning Board. **Motion as amended 5-0-2. (Autorino & Zuppan abstained)**
5. AGENDA CHANGES AND DISCUSSION:

Item 8-B was moved from Consent to Regular Agenda.

6. STAFF COMMUNICATIONS:

Staff commented that the Fire Department was available to provide assistance, as the elevator was out of operation.

6-A Future Agendas

Staff presented the upcoming projects to come before the Planning Board.

6-B Zoning Administrator Report

Staff reported that on August 4, 2009 a Use Permit and Design Review application for a project at 1208 Lincoln was approved for two residential units on the second-floor of an existing commercial structure.

Board member Lynch asked how the Green Building Ordinance would be introduced to the community and recommended that staff contact the pertinent green building organizations to obtain technical assistance as well as education materials for the community.

Vice-President Ezzy Ashcraft asked whether the building community would get the opportunity to review the proposed ordinance in a workshop format.

President Kohlstrand requested that the work-program for the fiscal year be included on the upcoming project list.

7. ORAL COMMUNICATIONS:

Barbara Kerr spoke to item 8-A (continued) and stated that the project does not currently comply with the approvals granted in the past. She requested that any future plans be made to conform to the General Plan and the Municipal Code.

8. CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Board or a member of the public by submitting a speaker slip for that item.

8-A Use Permit – PLN09-0184 – Applicant - Chengben “Peter” Wang for Encinal Terminals – A request to approve an amendment of the existing use permit UP-94 06 to allow for the outdoor storage, refurbishing, and sale and lease of shipping containers, outdoor storage of boats, watercraft, automobiles, RV’s, chassis, trailers, automotive equipment, vehicles, buses, trucks, mobile homes, construction equipment and materials for business, homes, commercial and/or household goods and ancillary uses including office or retail functions from September 26, 2009 through August 31, 2015. **Applicant requested continuance to the September 28, 2009 Planning Board Meeting.**

Rezoning – PLN09-0222- Applicant - City of Alameda. A rezoning of property currently occupied by ConGlobal Industries from M-2, General Industrial (Manufacturing) District, to M-X Mixed Use Planned Development District to conform to the General Plan Mixed Use Designation. **Applicant requested continuance to the September 28, 2009 Planning Board Meeting.**

Zoning Text Amendment – PLN09-0243- M-X Zoning District Regulations – Applicant: City of Alameda. A proposed text amendment to the M-X Mixed Use Planned Development District zoning regulations to allow for application for interim use permits prior to approval of a master plan for the property under certain conditions. **Applicant requested continuance to the September 28, 2009 Planning Board Meeting.**

Motioned by Board member Cunningham/seconded by Vice-President Ezzy Ashcraft to continue item 8-A to the meeting of September 28, 2009. Approved 7-0

9. REGULAR AGENDA ITEMS:

8-B Conformance Rezoning – Applicant: City of Alameda: PLN09-0110 – 1913 Sherman Street (APN 074-0906-031-08) A rezoning of a 1.9 acre property from M-1-PD, Intermediate Industrial (Manufacturing) Planned Development District, to R-2-PD, Two Family Residence Planned Development District.

Staff presented the agenda report.

Barbara Kerr corrected the staff report and listed the General Plan policies that direct the future street access to the site from Sherman Street and not Bay Street. She stated that she does not recommend the Planned Development overlay at this time, as the future development is still uncertain and speculative.

Vice-President Ezzy Ashcraft corrected the resolution's date and was supportive of Barbara Kerr's comments pertaining to street access.

President Kohlstrand asked staff why the Planned Development overlay was necessary.

Staff explained the flexibility in site design that is possible with a PD overlay designation.

Vice-President Ezzy Ashcraft motioned/Board member Cook seconded approval. Approved 7-0.

9-A 2009-2010 Election of Planning Board Officers. The Planning Board will elect a new President and Vice President for the upcoming year, as required by the Planning Board By-Laws.

Board member Cook thanked President Kohlstrand for her excellent work as the President of the Board and recommended Vice-President Ezzy Ashcraft to the position of President. Motioned by Board member Cook / seconded by Board Member Lynch. Approved 7-0.

Board member Lynch motioned/seconded by Board member Cunningham to elect Board member Autorino to the position of Vice-President. Approved 7-0.

9-B Use Permit – PLN08-0479 – 1051 Pacific Marina – Charlie Zawde. Proposed banquet and catering facility in an existing building that proposes to operate between the hours of 9 am – 10 pm, Sunday through Thursday, and 9 am to 11:30 pm, Friday and Saturday.

Staff addressed President Kohlstrand's question regarding the difference between the hours of operation as proposed by the applicant and staff's recommendation for shorter hours of operation. Staff then proceeded with the staff report outlining the parking study as submitted by the applicant's consultant and answered Planning Board members' questions raised at the previous meeting with the following answers: 1) Owner shall control the alcohol license: The applicant will not obtain their own license, but would only provide the space for the client or caterer who holds a liquor license to provide for the beverages and food; 2) Require parking lot clean-up after events: condition related to this was included in the resolution; 3) Limitations on the number and conditions for events: the applicant is agreeable to conditions for events, but staff is uncertain if the applicant is amenable to limiting the number of events; 4) Non-compliance activities: Non-permitted work had since been granted building permits with applicant paying code enforcement penalties, staff confirmed events had occurred without use permit approval; and 5) Similar banquet facility conditions of approval: Bayside Banquet facility's parking requirements were met through existing conditions; the Brazilian Room (Oakland) has a ratio of one security officer present per 50 guests between the ages of 16 and 21; the Oakland Yacht Club's approval contained no conditions limiting the number of events, number of guests, or specifying

parking requirements.

Board member Cook stated that crafting final conditions at the dais are difficult, and asked staff to evaluate the community's proposed conditions of approval. Staff commented that the community and the applicant should be heard one more time, to evaluate all proposed conditions and to develop a final list from that.

Board member Lynch requested a clarification of the resolutions from staff, applicant, and the community.

Vice-President Ezzy Ashcraft requested information on the noise and parking study.

President Kohlstrand asked whether the State Alcoholic Beverage Control (ABC) liquor license could be held by the caterer instead of the owner of the premises. Staff stated that caterers can obtain licenses and the property owner could proceed without holding the ABC license.

Board member Zuppan asked if clients could bring their own alcoholic beverages to the premises. Staff noted it understood this would be possible.

Board member Lynch motioned/ Board member Cunningham seconded to limit public testimony to three minutes each. Approved 7-0.

President Kohlstrand opened the public comment period.

T. Sullivan, the applicant's representative, stated that the applicant has made a significant effort after the last meetings to accommodate the public's comments about noise and parking concerns. He stated that while the applicant generally agrees to staff's proposed conditions of approval, there are concerns with proposed conditions #4, #7, #13, and #16. Conditions #7 and #16, requiring parking attendants and security personnel at every event, are unduly burdensome. He commented that these requirements should kick in when 150 or more attendees per event are present. Condition #13, requiring a 10 pm closing time at all events, would make the facility infeasible. He stated that the other facilities of a similar nature are not restricted in such a manner. Condition #4, prohibition of the sale of alcoholic beverages, is difficult to enforce. Although the applicant does not want to sell alcohol on site, there may be caterers who are required to sell the beverages pursuant to client's requests.

B. Warner, financial manager at Point Marina Vista, stated that an agreement has been reached between the adjacent property management, Legacy Partners, to utilize shared parking. He added, that similar businesses do not have the conditions proposed for Point Marina Vista and he asked that the Use Permit be approved to permit the operation of the business, which is similar to businesses permitted by right in the MX zoning.

C. Zawde, property manager, stated that his company is committed to operating a first class facility that can be a good neighbor. He stated that the noise concerns can be mitigated, as noted in the noise study and that parking can be provided. He requested that the hours of operations be up to 11:30pm on Friday and Saturday be granted to make the project financially feasible and that condition #4 be altered to require security personnel for

events that exceed 150 attendees.

M. Hershey, Oakland Yacht Club Member, stated that the Oakland Yacht Club does have conditions of approval that it complies with. In addition, he wanted to ensure that the City has a program that would monitor compliance with the conditions of approval, if the project was approved.

B. Paulsen, Oakland Yacht Club Member, spoke about noise and vehicle parking security concerns, but focused on how the property owner would comply with the conditions of approval and how they would be enforced.

T. Cronin, Marina View Towers resident, stated that the proposed use is not equivalent to the former restaurant use. He is gravely concerned about compliance with California Environmental Quality Act (CEQA) and American Disability Act (ADA) requirements. The proposed use would not be a good neighbor. He recommended that the Planning Board impose a performance and liability bond to protect the interests of the local residents and the City of Alameda.

L. Cardoza, Oakland Yacht Club Member, recommends denial of the application as the conditions of approval are not adequate to ensure compliance and monitoring.

N. Shemick, Marina Village resident, stated that the applicant has negated a good faith effort with the neighborhood, based on the previous business activities at the site that were non-compliant. She also requested that the project be denied, as it would likely cause many disruptions to the neighborhood, and result in frequent calls to the Alameda Police Department that is already overburdened due to staff reductions.

M. Keen, Marina Village resident, requested denial of the project, due to the fact that a banquet facility would create nuisances, and noise.

N. Bartlett, Marina Village resident, reiterated her concerns that the applicant would not be able to ensure compliance with the conditions of approval.

T. Charron, Marina Village resident and Pacific Marina Yacht Club, was discontented with the fact that no meeting with the applicant had been convened outside of the Planning Board hearings. He outlined the deficiencies in the parking analysis and then clarified the conditions of operation at the Pacific Marina Yacht Club. He is opposed to a facility that allows 'bring-your-own-booze' type of events. He requested that a mediator be brought into the discussion, who could facilitate and reach a reasonable set of conditions for both sides.

D. Carroll Marina Village resident, opposes the proposal on the basis that the banquet facility's management would not be a responsible or good neighbor. He also questions the adequacy of the parking study.

B. Jarvis, Marina Village resident, proposed that instead of allowing the banquet facility, the City should allow deviation from development standards and permit the construction of several high-end condominiums, which would recoup the applicant's costs and be a suitable neighbor to existing residential development.

President Kohlstrand closed the public comment period.

The Board asked that the applicant respond to the question of advertising and scheduling of upcoming events. The applicant stated that the website is not theirs and that no event was scheduled for September 6, 2009.

Board member Cook asked for clarification on the applicant's interpretation of 'bring-your-own-beverages' and why the applicant is requesting that condition #4 be changed. The applicant stated that no alcohol will be sold through the banquet's business operation, but that alcoholic sales would be strictly conducted by caterers.

Board member Lynch asked for clarification on the deposit for staff and material for Use Permits. Staff explained how staff time billed towards the deposit on processing the application. Board member Lynch suggested that a facilitator be selected to resolve the items that are contentious, paid for by the applicant or billed against the project. He rejected the idea to developing conditions of approval at the dais and suggested that the Board only review the project upon agreement of the different parties.

Vice-President Ezzy Ashcraft disagreed with the need to find a mediator and with the statement that the facility would not be ADA compliant. She would like to see a condition of approval requiring that the applicant obtain an ABC liquor license, as it would generate a vested interest by the property owner in maintaining good relationships with neighbors, as their liquor license would be at stake. She also recommended that condition #4 be revised to require security when an event has 100 or more attendees. In addition, she stated that enforcement of conditions is possible. She stated that a restaurant and a banquet facility are somewhat similar uses, but that the restaurant is more intensive from a parking need standpoint as they are open for business seven days a week, while this venue would operate once or twice a week.

Board member Autorino asked the applicant why building activity and events were conducted without proper permits. The applicant's representative stated that the property owner was unaware of the need to obtain a Use Permit to hold events. Board member Autorino asked how the business operations would be conducted and the community would be able to contact someone in the case of issues at events. The applicant's representative stated that the applicant would be available at all times for any comments by the neighborhood. Board member Autorino then asked why it was necessary to increase the security-guest ratio to 150 instead of 50. The representative stated that it was an arbitrary number, but they were flexible. Board member Autorino asked for clarification on the parking study and whether areas were left out in the parking need count as stated in the public testimony. Charlie Abrams, Traffic Engineer, explained the parking analysis and stated that the analysis was complete and did calculate parking needs for berths in the marina.

Obaid Khan, City of Alameda Civil Engineer, spoke about the review process and analysis. He recommended that if there are more than 130 to 150 attendees, valet parking or attendant parking should be required.

Board member Autorino wanted it in the record that the applicant's analysis stated on rare events, parking demand would exceed capacity, while the City's analysis revealed that

parking would exceed capacity on weekends.

Vice-President Ezzy Ashcraft requested that Condition #8 be revised that the applicant “shall secure the shared parking agreement”, instead of making a “good faith effort”.

Board member Cook noted that she did her own informal analysis of the site, and noted that a portion of the parking lot was not maintained or striped. She asked who was responsible for maintaining the parking lot. Mr. Khan stated that maintenance of the parking lot was up to the property owners that utilized the lot.

Board member Cunningham asked how the Board would like to proceed and how to resolve the issues that are still pending. He supported the property owner’s right to develop and utilize the site.

President Kohlstrand asked the Board to come to agreement on how to proceed. Either deny the project, or continue the project to another meeting to give the applicant time to meet with the neighbors and develop a set of acceptable conditions.

Board member Cook stated that there are too many unresolved issues, but that she would not be able to approve the project if there was a vote on the item this evening.

Board member Cunningham stated that he felt that it was the board’s responsibility to come to a decision instead of sending the project back to be revised yet again.

Board member Autorino expressed that he supported the application and wanted to move forward with its consideration.

Board member Zuppan favored a reuse of the site, but would not be able to approve it at this time, as she still had questions about the project.

President Kohlstrand stated that she is not able to approve the project at this time, given the applicant’s inability to achieve a resolution with concerned parties.

Board member Zuppan asked whether there was air-conditioning on the site. The applicant affirmed this. She commented that while without air-conditioning, attendees would likely leave doors open once the facility became too hot, which would result in significant noise intrusion into the neighborhood. She asked how the applicant expects to address that issue. The applicant stated that there are automatic closers on doors. On-site staff would close the doors when amplified music is played.

Board member Cunningham stated that a vestibule at the building may help mitigate noise intrusion into the neighborhood.

Board member Zuppan asked the applicant to confirm the number of events that are planned per year. The applicant agreed to limit the number of events until the use permit is up for its first review, at which point the number may be increased to what was originally requested.

Board member Zuppan asked if the applicant had secured an overflow parking agreement.

The applicant stated it had not as of yet, but a neighboring commercial property owner, Legacy Partners, had verbally agreed to an agreement for overflow parking on an as needed basis. She also asked how the applicant proposes to inform the community when a large event is scheduled. The applicant stated that all business owners and other interested parties would be informed prior to a large event taking place.

Board member Zuppan asked if the applicant would consider prohibiting the sale of tickets to the general public for events. The applicant agreed to this, but only if non-profit organizations would be exempted from this prohibition.

Vice-President Ezzy Ashcraft stated she would like to proceed and work at arriving at a decision, so that a successful business that could contribute and increase the economic vitality of the City could be established and favored working on a list of conditions that would minimize impacts to the neighborhood and allow the property owner to operate a successful banquet facility.

Following a discussion evaluating the merits and details of a lengthy list of conditions, recommended by staff, applicant, and concerned citizens, the Board developed the following list of conditions:

1. The applicant shall not operate the facility until a valid business license from the City of Alameda has been obtained.
2. The applicant shall not use, or permit any caterers and/or clients to use the kitchen facilities unless a valid permit to operate such kitchen has been issued to applicant from the Alameda County Environmental Health Department.
3. Alcoholic beverages at this facility may only be served in conjunction with events and then only by caterers that hold a valid and proper class of Alcoholic Beverage Control license issued by the State of California. Patrons, guests, attendees, staff, and owners are not allowed to consume any alcoholic beverages outside, except for in the enclosed patio area.
4. Any sale of alcoholic beverages shall only be done in conjunction with events and then only by caterers that hold a valid and proper class of Alcoholic Beverage Control license issued by the State of California. No facility owner, facility owner staff, patron, guest, or attendee is allowed to bring or serve any alcoholic beverage at any event held at this facility.
5. A maximum of 250 individual guests shall be permitted for any single event held at this facility.
6. Shared parking with the common parking area of Pacific Marina is operated on a first-come, first-serve basis. The property is controlled under a valid Agreement of Reciprocal Easements, Covenants, and Restrictions (dated 09/26/1989) and the facility at 1051 Pacific Marina must adhere to all rules and regulations of the Pacific Marina common parking. The applicant/facility shall not block or reserve parking spaces for event guests.
7. Parking attendants shall be uniformed and employed to monitor and direct parking

for all events with more than 135 attendees and must be on duty for at least the first two hours of the event.

8. Applicant shall coordinate with other uses at Pacific Marina for events with more than 135 attendees.

9. Before any event with more than 135 attendees, applicant must secure a shared parking agreement with a neighboring commercial property parking lot owner on a form approved by the City Attorney.

10. All events held at the facility shall comply with the City of Alameda's Noise Ordinance pursuant to Section 4.10 of the Alameda Municipal Code.

11. No amplified sound equipment shall be used outside the facility. All doors and windows of the facility must remain closed when public address systems are used or when amplified sound systems are in operation, bands are playing, or recorded music or video is being operated inside the facility.

12. All events held at the facility shall be private and not open to the general public.

13. Outdoor activities conducted in association with events shall be limited to the deck and lawn area enclosed by a fence on the parking lot side of the building. No music amplified or un-amplified or use of public address systems is allowed in this area or in any other outside areas of the property.

14. All events shall end by 10 p.m. Sunday – Thursday and 11:00 p.m. on Friday and Saturday.

15. The applicant is responsible for ensuring that all patrons quietly vacate the parking lots by 10:30 p.m., Sunday – Thursday and 11:30 p.m. on Friday and Saturday and must notify all clients, guests, and employees that the site is located next to residential neighborhoods and that all patrons must be respectful of residents of these neighborhoods. No alcoholic consumption, disruptive, noise, commotion, or unnecessary vehicle noise is allowed in the common Parking Area of Pacific Marina nor in the Alameda Marina City Park which abuts this facility.

16. The applicant is responsible for ensuring that all clients, caterers, staff, owners and guests for each event observe the posted speed limits in the Pacific Marina Parking area and on adjacent streets.

17. Security guards shall be provided at events in the following ratios to insure compliance of patrons, caterers, and staff with all mandates of this resolution.

- Between 100 – 200 attendees – Minimum of one security guard
- Greater than 200 attendees – Minimum of two security guards

Security services and its staff shall be bonded, trained to current industry standards, uniformed, and visible during all events held at this facility. Security guards must be on

duty at the facility and parking areas before any event commences and be employed to stay on duty during all events and remain on duty until the last patron leaves the common parking area.

18. The applicant shall be responsible for ensuring that patrons and employees do not park vehicles in private residential areas.

19. The applicant shall be responsible for the clean up of debris in the parking lots and on the Pacific Marina site generated by any events held at the facility.

20. The applicant shall be responsible for ensuring that all permanent employees, contractors, hired part-time or hourly staff, security personnel, caterers, and entertainers adhere to these conditions of approval and shall ensure compliance of same to these conditions of approval.

21. The on-site manager or representative of the property owner shall be on-site during events and maintain a list of the conditions of this use permit along with the contact information of the owner or owner's representative, so that issues related to events can be quickly addressed.

22. This Conditional Use Permit PLN08-0479 will be reviewed by the Alameda Planning Board every six months for a period of one year from the date of approval.

23. Planning staff shall mail a notice indicating the date, time, and location of each six month review of this use permit to all property owners, tenants, and homeowner associations within 500 feet of the project site so interested parties are notified and may to attend these meetings.

24. Revocation: This Conditional Use Permit may be modified or revoked by the Planning Board pursuant to the Alameda Municipal Code Section 30-21.3d should the Planning Board determine that: 1) the use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity; 2) the property is operated or maintained so as to constitute a public nuisance; or 3) the use is operated in violation of the conditions of the Conditional Use Permit.

25. Expiration: The Use Permit approval shall expire two (2) years after the date of approval or by August 24, 2011 unless the applicant has started operation of the banquet facility in reliance on this use permit. The applicant may apply for a time extension, not to exceed two (2) years. An extension request will be subject to approval by the Planning Board and must be filed prior to the date of expiration.

26. HOLD HARMLESS. The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Alameda, its Redevelopment Agency, the Alameda City Planning Board and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fee) against the City of Alameda, Alameda Redevelopment Agency, Alameda City Planning Board and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Alameda, the Planning and Building Department, Alameda City Planning Board, the City of Alameda Redevelopment Agency

or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperated in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

Board member Cunningham motioned/seconded by Board member Board member Autorino. Motion passed 6-0-1 subject to the above conditions of approval.

10. WRITTEN COMMUNICATIONS:

Municipal Code Amendment – City of Alameda. A Municipal Code Amendment to amend the Alameda Municipal Codes Sections 30-36 and 30-37 related to Design Review. (review only)

Board member Cunningham requested a red lined version of the amendment be made available to the Board

11. BOARD COMMUNICATIONS:

Board members may ask a question for clarification, make a brief announcement or make a brief report on his or her activities. In addition, the Board may provide a referral to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning a City matter or, through the chair, direct staff to place a request to agendize a matter of business on a future agenda.

None.

12. ADJOURNMENT: **11:10 p.m.**